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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,238	08/13/2001	Stephen F. Gass	SDT 315	8811
27630	7590	06/16/2004	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			DRUAN, THOMAS J	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,238

Applicant(s)

GASS ET AL.

Examiner

Thomas J. Druan, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) 8, 14-19, 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-13, 20 & 26-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/10/03, 8/21/03, 2/3/04, 3/15/03

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: IDS cont: 11/16/03, 2/12/04, 4/29/04, 4/17/04, 3/10/04

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 2, 5, 11-13 & 29, on 19 January 2004 is acknowledged. It is noted that claims 1, 3, 4, 6, 7, 9, 10, 20 & 26-28 will be examined as well.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 9, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,184,534 to Lee in view of US 4,117,752 to Yoneda.

Lee discloses the invention substantially as claimed, including a miter saw comprising a support structure 1 having a cutting zone; a swing arm 8 above and pivotally attached to the support structure; a blade 5 supported by the swing arm so that the blade may move into the cutting zone; a handle 6 associated with the swing arm and adapted so that a user may pivot the swing arm and blade into the cutting zone; and a motor (inherent) adapted to drive the blade.

Lee does not disclose a detection system to detect contact between a person and the blade, and a reaction system adapted to stop rotation of the blade upon detection by the detection system of contact between the person and the blade.

Yoneda teaches the use of a detection device that is used in conjunction with a blade

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14 whereupon contact between a user and the blade with trigger a reaction system in order to prevent or reduce injury to the user. The reaction system comprises a brake mechanism 20 that stops the blade from moving to "enhance the safety of operation" (column 1, lines 9-10). Therefore, it would have been obvious to one skilled in the art at the time of the invention to add a reaction system to the device of Lee to stop rotation of the blade in order to enhance the safety of operation.

4. Claims 1-3, 10, 11, 20, 28 & 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Yoneda in further view of US 4,512,224 to Terauchi.

Lee in view of Yoneda discloses the invention substantially as claimed, including a reaction system that stops rotation of a blade in response to detection by a detection system of contact between a person and the blade, but does not disclose a reaction system adapted to create an impulse against movement of the blade into the cutting zone or to move the blade in a direction away from the cutting zone upon detection by the detection system of contact between the person and the blade. Terauchi teaches both stopping rotation of a blade 12 mounted on a blade carrier 10 and moving the blade carrier (and blade) in a direction away from a cutting zone upon detection of a dangerous condition in order to ensure operator safety (column 3, lines 38-60).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to both stop rotation of the blade and move the swing arm (and blade) in a direction away from the cutting zone upon detection of a dangerous condition (contact between a person and the blade).

5. Claims 4-7, 12 & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Yoneda and Terauchi in further view of US 3,785,230 to Lokey.

Lee in view of Yoneda and Terauchi discloses the invention substantially as claimed, but does not teach a brake mechanism adapted to engage and stop rotation of the blade, where the brake mechanism creates an impulse against movement of the blade in to the cutting zone and moves the blade in a direction away from the cutting zone due to the angular momentum of the blade. Lee in view of Yoneda and Terauchi also does not disclose a brake mechanism adapted to maintain an operative position relative to the blade as the blade moves into the cutting zone. Lokey teaches the use of a brake mechanism 10 located at a fixed operative position relative to a blade 13, whereupon detection of a dangerous condition between a person and the blade results in the brake mechanism engaging and stopping the blade (column 2, lines 16-31). Figure 2 can be used to help show how such a brake mechanism uses the angular momentum of the blade to move the blade away from a cutting zone (generally below the blade in Figure 2). The blade in Figure 2 would be rotating counter-clockwise as is clear from the shape of the teeth on the blade. The brake elements 24 engage the blade on the upswing of the blade edge, and the angular momentum of the blade is transferred through the brake mechanism 10 to the blade carrier 12 in an upward direction, away from the cutting zone. Because the blade is mounted rigidly on the blade carrier, the blade will move upwards with the carrier upon engagement of the brake with the blade. When adapted to be on the swing arm of Lee, the swing arm

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would pivot away from the cutting zone. Therefore, it would have been obvious to use the brake mechanism of Lokey with the device of Lee in view of Yoneda and Terauchi in order to move the blade in a direction away from the cutting zone due to the angular momentum of the blade resulting in improved safety to an operator.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 2, 26, 28 & 29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of copending Application No. 10/052,273. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 5 of copending Application No. 10/052,273 discloses the miter saw with a detection system that detects contact between a person and a blade, and a reaction system that moves the blade away from a cutting zone upon detection of the person and the blade.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1, 2, 26, 28 & 29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of copending Application No. 10/052,806. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 5 of copending Application No. 10/052,273 discloses a miter saw with a detection system that detects contact between a person and a blade, and a reaction system that moves the blade away from a cutting zone upon detection of the person and the blade.

9. Claims 1-3, 9-11, 20 and 26-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of copending Application No. 10/052,273 in view of Terauchi. Claim 5 of copending Application No. 10/052,273 discloses a miter saw with a detection system that detects contact between a person and a blade, and a reaction system that moves the blade away from a cutting zone upon detection of the person and the blade, but does not teach stopping rotation of the blade. Terauchi teaches both stopping rotation of a blade and retracting a blade away from a cutting zone upon detection of a dangerous condition. Therefore, it would have been obvious to stop rotation of the blade recited in claim 5 of copending Application No. 10/052,273 in order to further increase the safety of the saw.

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This is a provisional obviousness-type double patenting rejection.

Response to Arguments

10. Applicant's arguments with respect to claims 1-7, 9-13, 20 and 26-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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tjd

June 1, 2004



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